

# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAY-VEE, INC.,

Plaintiff,

v.

ANNE WITTEMAN, FREEK OLGERS,  
PIETER DE VRIES, AND  
JASPER PALSTRA, doing business as  
THE VERBS,  
ROBBIE ADAMS, LESLEY BOYLE  
CHARLIE MARR AND MARTIN BLACK,  
doing business as THE VERBS, and  
ANNE WITTEMAN, FREEK OLGERS,  
PIETER DE VRIES, JASPER PALSTRA,  
ROBBIE ADAMS, LESLEY BOYLE  
CHARLIE MARR and  
MARTIN BLACK, individually,

Defendants.  
-----X

Docket No.: 07 Civ. 6954 (NRB) (DCF)

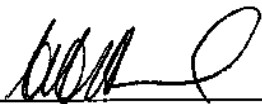
**NOTICE OF MOTION  
FOR SUBSTITUTED SERVICE**

**PLEASE TAKE NOTICE**, that upon the annexed declaration of Anthony H. Handal, together with the relevant exhibits, and the accompanying memorandum of law in support of the motion for substituted service brought by Plaintiff Jay-Vee, Inc. ("Jay-Vee"), Plaintiff will move this Court before The Honorable Naomi R. Buchwald, United States District Judge for the Southern District of New York, in Room 21A of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, for an order pursuant to Federal Rules of Civil Procedure 4(f)(3) permitting substituted service on defendants.

**PLEASE TAKE FURTHER NOTICE** that a proposed form of Order has been emailed to the Order and Judgments clerk, which Plaintiff respectfully requests be entered by this Court.

Dated: New York, New York  
September 18, 2007

Brown Rudnick Berlack Israels LLP

By:   
Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square  
New York, New York 10036  
Telephone: 212 209-4800  
Facsimile: 212 209-4801

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION  
FOR SUBSTITUTED SERVICE ON DEFENDANTS**

Plaintiff Jay-Vee, Inc. ("Jay-Vee") moves this Court for an order pursuant to Federal Rules of Civil Procedure Rule 4(f)(3) (i) permitting it to serve the summons and complaint on defendants Anne Witteman, Freek Olgers, Pieter De Vries, and Jasper Palstra, both individually and in their capacity doing business as The Verbs, by means of electronic mail at the address provided on The Verbs' MySpace website, <http://www.myspace.com/theverbkeeponswinging>; and (ii) permitting it to serve the summons and complaint on defendants Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black, both individually and in their capacity doing business as The Verbs, by means of electronic mail at the address provided on The Verbs' MySpace website, <http://www.myspace.com/theverbsife>.

As alleged in the complaint in this matter, the defendants are infringing the rights of the plaintiff on account of their use of the trademark THE VERBS in connection with the furnishing of musical entertainment services. Such services are being offered through two websites, both of which websites are connected with electronic mail accounts which website viewers are invited to use to contact the defendants to engage the defendants to provide the entertainment services of defendants. The two websites offer the services of defendants and are prominently marked with infringing uses of plaintiff's trademark THE VERBS.

Promptly after filing of the complaint, counsel for Jay-Vee retained the services of a private investigation company, American Trademark Investigations, Inc. ("ATI"), to locate the defendants for service of process. (Handal Decl., ¶ 5)<sup>1</sup>. ATI was able to find only an address for defendant Freek Olgers. (Handal Decl., Exs. B, D). Jay-Vee will attempt service of a copy of the summons and complaint on Mr. Olgers at the address found for him, namely Obrechstraat 163, 2517VS>S-Gravenhage, Netherlands. ATI was unable to find residential or business

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<sup>1</sup> References to the Declaration of Anthony H. Handal, dated September [date], 2007, and submitted in connection with Plaintiff's memorandum of law shall be as follows: ("Handal Decl., Ex. \_\_\_\_" or "Handal Decl., ¶ \_\_\_\_").

addresses for any of the remaining defendants, Anne Witteman, Pieter De Vries, Jasper Palstra, Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black or addresses for each of the two bands, both entitled “The Verbs.” (Handal Decl., Exs. C, D).

Federal Rules of Civil Procedure Rule 4(f)(3) authorizes service on defendants “by other means not prohibited by international agreement as may be directed by the court.” In addition, N.Y. C.P.L.R. § 308(5) expressly provides that “Personal service upon a natural person shall be made . . . in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section.” Defendants are infringing on plaintiff’s trademark through their MySpace websites.

Service of process by electronic mail has been authorized by this Court before where defendants operate an online business but cannot be reached through conventional methods. *See, e.g., Philip Morris USA Inc. v. Veles Ltd.*, No. 06CV2988 (GBD), 2007 U.S. Dist. LEXIS 19780, at \* 2- \* 10 (S.D.N.Y. Mar. 13, 2007) (permitting service of process by fax and electronic mail where defendants failed to provide physical contact addresses on their website); *see also D.R.I. Inc. v. Dennis*, No. 03 civ 10026, 2004 U.S. Dist. LEXIS 22541 (S.D.N.Y. June 3, 2004).


Both MySpace websites provide that the band, and thus its members, may be reached by sending an electronic mail through a link provided on the website. (Handal Decl., ¶ 9-10). The websites do not list physical addresses. Since Jay-Vee and ATI have been unable to locate physical addresses for each of the defendants, with the exception of Freek Olgers, in this case service by means of electronic mail through the website MySpace.com is the only known way to serve the defendants and thus is the most likely form of service to provide actual notice to the defendants. (Handal Decl., ¶ 9-11).

**CONCLUSION**

For all of the foregoing reasons, it is respectfully requested that this Court grant the plaintiff the relief requested herein.

Dated: New York, New York  
September 18, 2007

Brown Rudnick Berlack Israels LLP

By:   
\_\_\_\_\_  
Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square  
New York, New York 10036  
Telephone: 212 209-4800  
Facsimile: 212 209-4801

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAY-VEE, INC.,

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Defendants.  
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Docket No.: 07 Civ. 6954 (NRB) (DCF)

**DECLARATION OF ANTHONY H. HANDAL**

ANTHONY H. HANDAL, an attorney duly licensed and admitted to practice in and before the Courts of the State of New York and admitted to the bar of this Court, declares the following to be true pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm of Brown Rudnick Berlack Israels LLP, attorneys for Plaintiff Jay-Vee Inc. in the above-captioned action. I am fully familiar with and have personal knowledge of the facts and circumstances set forth herein.

2. I respectfully submit this declaration in support of Plaintiff's motion pursuant to Federal Rules of Civil Procedure Rule 4(f)(3) for substituted service on defendants Anne Witteman, Freek Olgers, Pieter De Vries and Jasper Palstra, both individually and doing business



as The Verbs, as well as defendants Robbie Adams, Lelsey Boyle, Charlie Marr and Martin Black, both individually and doing business as The Verbs.

3. The purpose of this declaration is to, *inter alia*, identify and set forth for the Court the facts and documentary materials which support and, upon which the Plaintiff will rely, in connection with its motion for substituted service.

4. A complaint was filed in connection with this matter on August 2, 2007. However, Plaintiff has been unable to effect service on any of the named defendants. True and correct copies of the Complaint, Summons, Civil Cover Sheet and Rule 7.1 Statement, file stamped August 2, 2007, are attached hereto as Exhibit A.

5. I retained the services of American Trademark Investigations, Inc. ("ATI") to investigate the addresses at which the defendants could be served.

6. Liz Elfeld, President of ATI, searched for addresses, current or otherwise, for defendants Anne Witteman, Freek Olgers, Pieter De Vries, Jasper Palstra, Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black. Ms. Elfeld also searched for addresses for the two bands, both of which operate under the name "The Verbs." Ms. Elfeld provided two reports of her searches, one dated September 4, 2007 and the other dated September 6, 2007. A true and accurate copy of the September 4, 2007 report is attached hereto as Exhibit B and a true and accurate copy of the September 6, 2007 report is attached hereto as Exhibit C.

7. Ms. Elfeld located the address of defendant Feek Olgers, under whose name the website [www.theverbs.nl](http://www.theverbs.nl), the website for the Netherlands version of The Verbs, was registered. Plaintiff will attempt service of the summons and complaint on Feek Olgers at his address at Obrechstraat 163, 2517VS>S-Gravenhage, Netherlands pursuant to F.R.C.P. Rule 4(f).

8. Ms. Elfeld provided a final report, dated September 10, 2007, indicating that she was unable to locate the addresses of the remaining defendants, Anne Witteman, Pieter De Vries, Jasper Palstra, Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black. A true and accurate copy of the September 10, 2007 report is attached hereto as Exhibit D.

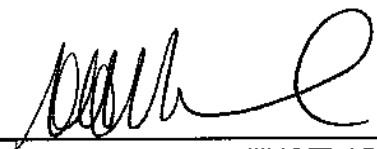
9. Defendants Anne Witteman, Freek Olgers, Pieter De Vries, Jasper Palstra are members of a band, entitled "The Verbs," who operate a MySpace website located at <http://www.myspace.com/theverbkeepsongwinging>. This website, which indicates that the band is based in the Netherlands, invites viewers to contact the band by electronic mail, a link to which is provided on the website.

10. Defendants Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black are members of a band, entitled "The Verbs," who operate a MySpace website located at <http://www.myspace.com/theverbsfife>. This website, which indicates that the band is based in the United Kingdom, invites viewers to contact the band by electronic mail, a link to which is provided on the website.

11. Plaintiff believes that sending a copy of the summons and complaint to the electronic mail addresses found at <http://www.myspace.com/theverbkeepsongwinging> and <http://www.myspace.com/theverbsfife>, respectively, is a reasonably calculated method which will apprise each of the defendants that this action has been filed against them.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on September 18, 2007.

  
\_\_\_\_\_  
ANTHONY H. HANDAL

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**JUDGE BUCHWALD**

JAY-VEE, INC.,

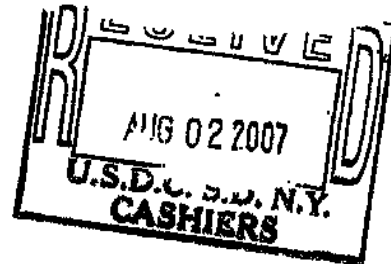
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ROBBIE ADAMS, LESLEY BOYLE  
CHARLIE MARR and  
MARTIN BLACK, individually,

Defendants.

**07 CIV 6954**  
2007 Civ.



**COMPLAINT FOR TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION**

Plaintiff, Jay-Vee, Inc., d.b.a. The Verbs, brings this action against the  
named Defendants for injunctive relief and damages under the laws of the United  
States and the State of New York and alleges as its Complaint:

**PARTIES**

1. Plaintiff Jay-Vee, Inc. (hereinafter "The Verbs") is a corporation  
duly organized and existing under the laws of the State of New York having a  
place of business at c/o ML Management 125 West 55<sup>th</sup> Street, New York, New  
York 10019. The Verbs operates under the trademark THE VERBS, providing

musical entertainment services in connection with live performances and is in the business of recording performances which are sold as compact disc recordings regarding musical recordings.

2. Upon information and belief, Defendants Robbie Adams, Lesley Boyle, Charlie Marr and Martin Black are individuals based in the United Kingdom (The "UK Defendants") and are doing business and/or committing acts of infringement in violation of the trademark rights of plaintiff The Verbs within the State of New York and nationwide. The UK Defendants are doing business as "The Verbs".

3. Upon information and belief, Defendants, Freek Olgers, Pieter De Vries and Jasper Palstra are individuals based in the Netherlands (The "Netherlands Defendants") and are doing business and committing acts of infringement in violation of the trademark rights of plaintiff The Verbs within the State of New York and nationwide. The Netherlands Defendants are doing business as "The Verbs".

### **JURISDICTION**

4. This Court has jurisdiction over this action by virtue of:

(a) Jurisdiction founded on the existence of a federal question arising under the Lanham Trademark Act.

(b) The Court has jurisdiction under Sections 43(a) of the Federal Trademark Act of 1946, 15 U.S.C. 1121 and 1125(a), and the Judicial Code, 28 U.S.C. 1331(a), 1332 and 1338(a) in that this case arises under the trademark laws

of the United States, 15 U.S.C. 1051 et seq., as hereinafter more fully appears; and the common law.

(c) The Court has jurisdiction over the common law claims and claims herein arising under the statutes and common law of the State of New York under the provisions of 28 U.S.C. 1338(b) in that said claims are joined with a substantial and related claim under the trademark laws of the United States, 15 U.S.C. 1051 et seq.

(d) Venue is proper under 28 U.S.C. 1391.

#### **FACTS COMMON TO ALL COUNTS**

5. Plaintiff conducts a business in which it records and markets musical performances and gives live performances of musical works. Plaintiff conducts its business under the trade name, trademark and service mark **THE VERBS** (the "Trademark").

6. Plaintiff is the owner of rights in the trademark **The Verbs** as used in association with musical recordings and live musical performances and related goods and services.

7. **The Verbs** two principal performers are Steve Jordan and Meagan Voss, who, in addition to recording as "The Verbs," are well-known performers. Mr. Jordan, a Grammy winning producer, who has recently toured with Eric Clapton, has recorded with Bruce Springsteen, and has corroborated with Keith Richards in songwriting, production and performance. He was also a member of

the original Saturday Night Live band and founded the David Letterman band with Paul Schaffer.

8. Plaintiff The Verbs owns and has used the trademark THE VERBS in connection with sound recordings under the JVC Victor label, and is the assignee of two trademark applications to register that mark in the United States Patent and Trademark Office both for sound recordings and live performances.

9. Plaintiff's use of the trademark "The Verbs" began at least as early as 2002, and use since the date has been continuous. Plaintiff has expended considerable sums of money in promoting its business under the trademark THE VERBS.

10. Plaintiff has caused the release of a first album under the JVC label and is a second CD release.

11. By virtue of years of continuous and exclusive use together with Plaintiff's expenditures on advertising and promotion, Plaintiff's The Verbs mark has come to symbolize extensive goodwill identifying Plaintiff.

12. Upon Plaintiff becoming aware that individual Defendants were performing or purporting to perform as a musical group under the infringing The Verbs trademark, Plaintiff sent a cease and desist letter to the individual Defendants advising of Plaintiff's rights in the mark The Verbs and demanding that Defendants cease all use of the infringing designation The Verbs.

13. The individual Defendants continue to infringe upon the mark The Verbs which use is confusingly similar and identical to Plaintiff's trademark usage.

14. Upon information and belief, the UK Defendants and the Netherlands Defendants (hereinafter referred to jointly as the "Individual Defendants") have maliciously, willfully, intentionally, and with conscious disregard for the consequences, engaged in advertising, marketing and sales of performance services and recordings under the infringing designation "The Verbs".

15. Plaintiff, prior to the acts complained of herein, has been and is now engaged in interstate commerce by virtue of ongoing sales of recordings and performances under the trademark THE VERBS.

16. Plaintiff's compact disc recordings, sold under the trademark THE VERBS have been sold and continue to be sold throughout the United States and internationally. Plaintiff derives substantial benefits from selling its recordings and from live performances under Plaintiff's exclusive Trademark.

17. Plaintiff has used and continues to use its distinctive Trademark and, by virtue of widespread sales, the Trademark has come to indicate origin with Plaintiff. Plaintiff, by virtue of said use, and through Plaintiff's business, has obtained a reputation of the highest quality.



18. Plaintiff has incurred substantial expense and has devoted substantial resources to make THE VERBS compact disc recordings and live entertainment services recognizable to consumers.

19. Upon information and belief, after Plaintiff's adoption and use of the Trademark, and without any authorization, the Individual Defendants, with actual and constructive knowledge of Plaintiff's use of the Trademark and in contravention of Plaintiff's trademark rights, adopted and used Plaintiff's distinctive mark on the Individual Defendants' services and on the Individual Defendants' products. The Individual Defendants are offering, and/or, upon information and belief, have distributed and/or continue to distribute in interstate commerce and in New York State goods and/or services to the public under the infringing trademark, for the Individual Defendants' own commercial advantage.

20. Defendants have used and continue to use the infringing trademark in direct competition with Plaintiff. Defendants have used and continue to infringe upon the Trademark in connection with sales, offering for sale and/or distribution, advertising and promotion of goods bearing marks identical and/or substantially similar to Plaintiff's, in a manner that is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such services and goods.

21. Defendants have deliberately misled and will continue to mislead consumers, and prospective consumers, as well as the public at large, to believe, contrary to fact, that Defendants' services/goods are marketed, sponsored or

endorsed by, or affiliated with Plaintiff. Defendants are unfairly competing with Plaintiff by trading on and disparaging Plaintiff's goodwill symbolized by its Trademark.

22. Defendants' acts are a false description and representation that said services/goods are made by, sponsored by and/or affiliated with Plaintiff. Said acts are in violation of the unfair competition law in that Defendants have used, in connection with services/goods, a false designation of origin and a false description and representation, including words, reproductions and other symbols tending to falsely describe or represent the same and have caused such services/goods to enter into interstate commerce.

23. As a direct and proximate result of these acts of unfair competition, trademark infringement and false designation of origin, Plaintiff has sustained and will continue to sustain irreparable damage and injury to its business, goodwill, reputation and profits, in an amount not presently known. Plaintiff is entitled to judgment for Defendants' profits and any damages sustained by Plaintiff in consequence of the deliberate nature of the infringement by Defendants in an amount equaling three times said damages.

24. By reason of the acts of Defendants herein alleged, Plaintiff has been damaged and, unless restrained, Defendants have and will continue to deceive the public, impair the value of Plaintiff's services and otherwise will cause Plaintiff immediate and irreparable harm.

#### **COUNT FOUR – FEDERAL UNFAIR COMPETITION**

25. As a cause of action and ground for relief, Plaintiff alleges and incorporates by reference paragraphs 1 through 24 of this Complaint as a part of this Count.

26. Without Plaintiff's consent, Defendants willfully misappropriated Plaintiff's Trademark and have displayed and continue to display and otherwise use said Trademark in connection with Defendants' businesses.

27. In so doing, Defendants are deceiving the public and deliberately capitalizing on the goodwill and reputation of Plaintiff.

28. The aforesaid acts of Defendants constitute dilution, unfair competition and passing off, and are likely to cause the trade and the public to erroneously believe that the Individual Defendants' products and services are manufactured and/or guaranteed by Plaintiff, or otherwise associate with Plaintiff. Said acts are in violation of 15 U.S.C. 1125 (a) in that Defendants have used, in connection with goods and services, a false designation of origin and a false description and representation, including words, reproductions and other symbols tending falsely to describe or represent the same and have caused such goods/services to enter into interstate commerce.

29. Such acts have injured and continue to injure Plaintiff's business reputation and dilute or otherwise injure or destroy the distinctive character of Plaintiff's Trademark and the quality of Plaintiff's reputation associated with its

Trademark, all to Plaintiff's substantial and irreparable harm. As a result, Plaintiff is entitled to relief from this court under 15 U.S.C. 1126(h) and (i).

30. As a result of Defendants' willful, fraudulent and malicious acts, Plaintiff has suffered damage and Defendants have been unjustly enriched in an amount which is uncertain at present. Plaintiff is entitled to judgment for Defendants' profits and any damages sustained by Plaintiff in consequence of the infringement by Defendants in an amount equaling three times said damages.

31. By reason of the acts of Defendants alleged herein, Plaintiff has been damaged and, unless restrained, Defendants have and will continue to confuse and deceive the public, impair the value of Plaintiff's Trademark and otherwise cause Plaintiff immediate and irreparable harm.

32. Defendants are liable to Plaintiff, jointly and severally, for violation of 15 U.S.C. 1125(a).

#### **COUNT TWO – DILUTION UNDER 15 U.S.C. §1125**

33. As a cause of action and ground for relief, Plaintiff alleges and incorporates by reference paragraphs 1 through 32 of this Complaint as a part of this Count.

34. Defendants have created a likelihood of injury to the business reputation and has diluted the distinctive quality of the Trademark, and thus dilutes Plaintiff's rights to exclusive use of the Trademark.

35. The foregoing acts of Defendants by diluting the distinctive quality of Plaintiff's use of the Trademark, have destroyed and will continue to destroy Plaintiff's goodwill and reputation, thereby causing Plaintiff irreparable harm.

36. As a result of the foregoing acts, Plaintiff has suffered substantial damages and Defendants have acquired substantial profits at Plaintiff's expense.

37. Defendants' acts of dilution will continue unless enjoined by this Court.

38. Defendants are liable to Plaintiff, jointly and severally, for dilution in violation of 15 U.S.C. 1125(c).

### **COUNT THREE – STATE UNFAIR COMPETITION**

39. As a cause of action and ground for relief, Plaintiff alleges and incorporates by reference paragraphs 1 through 38 of this Complaint as a part of this Count.

40. Defendants are liable to Plaintiff, jointly and severally, for unfair competition under the common law and the statutes of the State of New York relating to unfair competition, passing off, dilution and trademark infringement.

### **PRAYER FOR RELIEF FOR ALL COUNTS**

WHEREFORE, Plaintiff prays:

1. For a preliminary and final injunction restraining Defendants, their agents, servants, employees, successors, assigns and those in privity and/or concert

with them or any of them from using Plaintiff's Trademark or any other designations closely similar thereto;

2. For an order requiring Defendants to recall from its distributors, wholesalers, retailers and customers any product, Internet advertising, website, advertisement, promotional literature or other materials bearing any reproduction, counterfeit, copy or colorable imitation thereof.

3. Defendants be required to account to Plaintiff for any and all profits derived by Defendants from the sale of its goods and for all damages sustained by Plaintiff by reason of said acts of trademark infringement and unfair competition complained of herein.

4. For a judgment according to the circumstances of the case, for such sum above the amount found in actual damages, but not to exceed three times such amount as the Court may deem just.

5. For an order requiring that all products, documents, materials, labels, signs, products, packages, wrappings, receptacles and advertisements in Defendants' possession or control bearing the trademark, or any derivatives thereof, or any reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same shall be delivered up and destroyed.

6. This Court grant and enter a judgment that the above referenced trademark rights are good and valid at law and owned by Plaintiff and infringed by Defendants and that Defendants and all persons acting in concert with them or any

of them be enjoined from performing under the infringing designation and from all use of plaintiff's trademark THE VERBS and from making and using and otherwise infringing upon the trademark of Plaintiff in connection with compact disc recordings and other products.

7. Reasonable attorney's fees.
8. Costs of suit and such other relief as may be just.

Respectfully submitted,

JAY-VEE, INC.

Dated: July 26, 2007

By: 

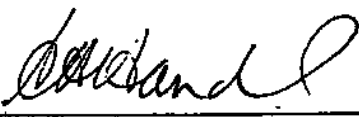
Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square  
New York, New York 10036  
Telephone: 212 209-4800

### DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Jay-Vee, Inc.  
hereby demands a jury trial of any issues in this action so triable.

Brown Rudnick Berlack Israels LLP

Dated: July 26, 2007

By:   
Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square  
New York, New York 10036  
Telephone: 212 209-4800

# 8161992 v1 - HANDALAH - 025725/0003



AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

SEE ATTACHMENT A FOR FULL CAPTION

V.

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

**07 CIV 6954**  
**JUDGE BUCHWALD**

TO: (Name and address of Defendant)

(SEE ATTACHMENT B for Names; Addresses are presently Unknown)

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

ANTHONY HANDAL, ESQ.  
BROWN RUDNICK BERLACK ISRAELS LLP  
7 TIMES SQUARE  
NEW YORK, NEW YORK 10036

an answer to the complaint which is served on you with this summons, within TWENTY days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

AUG 02 2007

CLERK

*Marcos Quintero*

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER ( <i>PRINT</i> )	TITLE

*Check one box below to indicate appropriate method of service*

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
		\$0.00

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date Signature of Server

\_\_\_\_\_  
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

ATTACHMENT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JAY-VEE, INC.,

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ANNE WITTEMAN, FREEK OLGERS,  
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**ATTACHMENT B**

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8. LESLEY BOYLE
9. CHARLIE MARR
10. MARTIN BLACK

JS-4 CIVIL  
REV. 12/2005

JUDGE BUCHWALD

CIVIL COVER SHEET

07 CIV 6954

The JS-4 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS JAY-VEE, INC.

DEFENDANTS SEE ATTACHMENT A.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ANTHONY HANDAL, ESQ.

BROWN RUDNICK BERLACK ISRAELS LLP

7 TIMES SQUARE, NEW YORK, NY 10036, (212) 209-4942

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT)

TRADE INFRINGEMENT

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously Assigned ☐If yes, was this case Vol ☐ Invol. ☐ Dismissed, No ☐ Yes ☐ If yes, give date \_\_\_\_\_

(PLACE AN [X] IN ONE BOX ONLY)

NATURE OF SUIT

## ACTIONS UNDER STATUTES

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
[ ] 110 INSURANCE	[ ] 310 AIRPLANE	[ ] 362 PERSONAL INJURY -	[ ] 610 AGRICULTURE	[ ] 422 APPEAL	[ ] 400 STATE
[ ] 120 MARINE	[ ] 315 AIRPLANE PRODUCT	[ ] 365 MED MALPRACTICE	[ ] 620 FOOD & DRUG	[ ] 423 WITHDRAWAL	[ ] 410 REAPPORTIONMENT
[ ] 130 MILLER ACT	[ ] 320 LIABILITY	[ ] 368 PERSONAL INJURY	[ ] 625 DRUG RELATED	[ ] 423 WITHDRAWAL	[ ] 410 ANTI-TRUST
[ ] 140 NEGOTIABLE	[ ] 320 ASSAULT, LIBEL &	[ ] 368 PRODUCT LIABILITY	[ ] 630 SEIZURE OF	[ ] 423 WITHDRAWAL	[ ] 430 BANKS & BANKING
[ ] 150 RECOVERY OF	[ ] 330 SLANDER	[ ] 368 ASBESTOS PERSONAL	[ ] 630 PROPERTY	[ ] 423 WITHDRAWAL	[ ] 450 COMMERCE/ACC
[ ] 150 OVERPAYMENT &	[ ] 330 FEDERAL	[ ] 368 INJURY PRODUCT	[ ] 640 LIQUOR LAWS	[ ] 423 WITHDRAWAL	[ ] 460 RATES/ETC
[ ] 150 EMPLOYERS'	[ ] 340 LIABILITY	[ ] 368 LIABILITY	[ ] 640 RR & TRUCK	[ ] 423 WITHDRAWAL	[ ] 460 DEPORTATION
[ ] 150 JUDGMENT	[ ] 340 MARINE	[ ] 368 LIABILITY	[ ] 650 AIRLINE REG.	[ ] 423 WITHDRAWAL	[ ] 470 RACKETEER INFLU-
[ ] 151 MEDICARE ACT	[ ] 345 MARINE PRODUCT	[ ] 370 OTHER FRAUD	[ ] 650 OCCUPATIONAL	[ ] 423 WITHDRAWAL	[ ] 470 ENDED & CORRUPT
[ ] 152 RECOVERY OF	[ ] 345 LIABILITY	[ ] 371 TRUTH IN LENDING	[ ] 660 SAFETY/HEALTH	[ ] 423 WITHDRAWAL	[ ] 470 ORGANIZATION ACT
[ ] 152 DEFAULTED	[ ] 350 MOTOR VEHICLE	[ ] 380 OTHER PERSONAL	[ ] 690 OTHER	[ ] 423 WITHDRAWAL	[ ] 480 CONSUMER CREDIT
[ ] 152 STUDENT LOANS	[ ] 355 MOTOR VEHICLE	[ ] 380 PROPERTY DAMAGE		[ ] 423 WITHDRAWAL	[ ] 480 CABLE/SATELLITE TV
[ ] 152 (EXCL. VETERANS)	[ ] 360 PRODUCT LIABILITY	[ ] 385 PROPERTY DAMAGE		[ ] 423 WITHDRAWAL	[ ] 480 SELECTIVE SERVICE
[ ] 153 RECOVERY OF	[ ] 360 OTHER PERSONAL	[ ] 385 PRODUCT LIABILITY		[ ] 423 WITHDRAWAL	[ ] 480 SECURITIES/
[ ] 153 OVERPAYMENT OF	[ ] 360 INJURY			[ ] 423 WITHDRAWAL	[ ] 480 COMMODITIES/
[ ] 153 VETERANS' BENEFITS				[ ] 423 WITHDRAWAL	[ ] 480 EXCHANGE
[ ] 160 STOCKHOLDERS SUITS				[ ] 423 WITHDRAWAL	[ ] 480 CUSTOMER
[ ] 190 OTHER CONTRACT				[ ] 423 WITHDRAWAL	[ ] 480 CHALLENGE
[ ] 195 CONTRACT PRODUCT				[ ] 423 WITHDRAWAL	[ ] 480 12 USC 3410
[ ] 195 LIABILITY				[ ] 423 WITHDRAWAL	[ ] 480 AGRICULTURE ACTS
[ ] 196 FRANCHISE				[ ] 423 WITHDRAWAL	[ ] 480 ECONOMIC
				[ ] 423 WITHDRAWAL	[ ] 480 STABILIZATION ACT
				[ ] 423 WITHDRAWAL	[ ] 480 ENVIRONMENTAL
				[ ] 423 WITHDRAWAL	[ ] 480 MATTERS
				[ ] 423 WITHDRAWAL	[ ] 480 ENERGY
				[ ] 423 WITHDRAWAL	[ ] 480 ALLOCATION ACT
				[ ] 423 WITHDRAWAL	[ ] 480 FREEDOM OF
				[ ] 423 WITHDRAWAL	[ ] 480 INFORMATION ACT
				[ ] 423 WITHDRAWAL	[ ] 480 APPEAL OF FEE
				[ ] 423 WITHDRAWAL	[ ] 480 DETERMINATION
				[ ] 423 WITHDRAWAL	[ ] 480 UNDER EQUAL ACCE-
				[ ] 423 WITHDRAWAL	[ ] 480 TO JUSTICE
				[ ] 423 WITHDRAWAL	[ ] 480 CONSTITUTIONALITY
				[ ] 423 WITHDRAWAL	[ ] 480 OF STATE STATUTES
				[ ] 423 WITHDRAWAL	[ ] 480 OTHER STATUTORY
				[ ] 423 WITHDRAWAL	[ ] 480 ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER INJ \_\_\_\_\_ JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

## ORIGIN

- ☒ 1 Original Proceeding    ☐ 2a. Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from (Specify District)    ☐ 6 Multidistrict Litigation    ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court  
AND at least one party is a pro se filer

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF    ☐ 2 U.S. DEFENDANT    ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY)    ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.  
(28 USC 1332, 1441)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF <input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF <input type="checkbox"/> 5 <input type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2 <input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4 <input type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6 <input type="checkbox"/> 6

## PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

JAY-VEE, INC.  
c/o ML MANAGEMENT  
125 WEST 55TH STREET  
NEW YORK, NEW YORK 10019

NEW YORK COUNTY

## DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

## DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

SEE ATTACHMENT B.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS    ☒ FOLEY SQUARE  
(DO NOT check either box if this a PRISONER PETITION.)

DATE

SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

8/1/2007

☐ NO☒ YES (DATE ADMITTED Mo. JAN Yr. 1975)

RECEIPT #

Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

J Michael McMahon, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

ATTACHMENT A

(List of Defendants)

1. ANNE WITTEMAN, FREEK OLGERS, PIETER DE VRIES, AND JASPER PALSTRA, doing business as THE VERBS,
2. ROBBIE ADAMS, LESLEY BOYLE, CHARLIE MARR AND MARTIN BLACK, doing business as THE VERBS
3. ANNE WITTEMAN
4. FREEK OLGERS
5. PIETER DE VRIES
6. JASPER PALSTRA
7. ROBBIE ADAMS
8. LESLEY BOYLE
9. CHARLIE MARR
10. MARTIN BLACK

**ATTACHMENT B**

(Defendant(s) Addresses(es) and County(ies))

1. ANNE WITTEMAN, FREEK OLGERS, PIETER DE VRIES, AND JASPER PALSTRA, doing business as THE VERBS - UNKNOWN
2. ROBBIE ADAMS, LESLEY BOYLE, CHARLIE MARR AND MARTIN BLACK, doing business as THE VERBS - UNKNOWN
3. ANNE WITTEMAN - UNKNOWN
4. FREEK OLGERS - UNKNOWN
5. PIETER DE VRIES - UNKNOWN
6. JASPER PALSTRA - UNKNOWN
7. ROBBIE ADAMS - UNKNOWN
8. LESLEY BOYLE - UNKNOWN
9. CHARLIE MARR - UNKNOWN
10. MARTIN BLACK - UNKNOWN



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**JUDGE BUCHWALD**

JAY-VEE, INC.,

Plaintiff,

v.

ANNE WITTEMAN, FREEK OLGERS,  
PIETER DE VRIES, AND  
JASPER PALSTRA, doing business as  
THE VERBS,  
ROBBIE ADAMS, LESLEY BOYLE  
CHARLIE MARR AND MARTIN BLACK,  
doing business as THE VERBS, and  
ANNE WITTEMAN, FREEK OLGERS,  
PIETER DE VRIES, JASPER PALSTRA,  
ROBBIE ADAMS, LESLEY BOYLE,  
CHARLIE MARR and  
MARTIN BLACK, individually,

Defendants.

**07 CIV 6954**  
Civil Action No.

Rule 7.1 Statement



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for Jay-Vee, Inc. (a private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

NONE

Date: August 1, 2007

Anthony H. Handal (AH-04)

# **EXHIBIT B**

## American Trademark Investigations, Inc.

September 4, 2007

Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square, 47<sup>th</sup> Floor  
New York, NY 10036

File No. 0708VERBS  
Re: The Verbs  
Your Reference No.: 025725/0003

Dear Anthony:

Pursuant to your request to identify a physical address for the band - The Verbs - as depicted on [www.myspace.com](http://www.myspace.com), we submit the following report:

Preliminary Internet searches at dogpile.com; copernic.com; google.com and yahoo.com for the band members: Anne Witteman; Freek Olgers; Pieter De Vries; Jasper Palstra; Robbie Adams; Lesley Boyle; Charlie Marr; and Martin Black met with negative results for any viable contact.

A people locator search at Zoom Info proved negative. (Note: Our in-house data bases only cover the U.S.).

The myspace pages provided to our office by your firm identifies web site, [www.theverbs.nl](http://www.theverbs.nl).

A WhoIs database search for TheVerbs.nl lists Registrant: Freek Olgers at Obrechtstraat 163, 2517VS >S-Gravenhage, Netherlands.

The website [www.theverbs.nl](http://www.theverbs.nl) is not viable and we were unable to locate any archived pages from the site.

A search for additional domain registrations wherein Freek Olgers is listed as registrant provided the following:

Tuned-in-.nl. This site is not viable. Lists same address as TheVerbs.nl at Obrechtstraat 163, 2517VS >S-Gravenhage, Netherlands.

Onlineworkspace.net. This site forwards to [www.fcodesign.com](http://www.fcodesign.com) which is a web listing company. The domain onlineworkspace.net lists registrant as Freek Olgers at same address. E-Mail: [freek@fcodesign.com](mailto:freek@fcodesign.com). Telephone Number: 31-645-144-745.  
On September 4, 2007 we telephoned said number and received a recording in Dutch.

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450 Shore Road  
Suite 4-L  
Long Beach, New York 11561  
(516) 431-8644  
Fax: (516) 431-8658

## American Trademark Investigations, Inc.

Olgers.com lists Freek Olgers as registrant at same address and telephone number. This site forwards to [www.picasaweb.google.com](http://www.picasaweb.google.com) wherein photographs of Freek Olgers are depicted.

A search within an on-line Netherlands telephone directory proved negative; unable to confirm address. Possibly a non-published number.

Netherlands directory assistance proved negative for a listing for Freek Olgers at Obrechtstraat 163, 2517VS >S-Gravenhage, Netherlands.

We located an earlier cache reference to another band - Tuned In - at [www.myspace.com](http://www.myspace.com) wherein listed under band members are Anne Witteman; Jasper Palstra; and Pieter de Vries.

We located a cache reference at [www.snuffelcorner.nl](http://www.snuffelcorner.nl) wherein reference is made Jasper Palstra.

On September 4, 2007 we telephoned Freek Olgers at 31-645-144-745 and spoke with him. We confirmed his current address at Obrechtstraat 163, 2517VS >S-Gravenhage, Netherlands.

We await your further instructions.

Sincerely,

Elizabeth Elfeld

EE:llc  
brownrudnick.verbs

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Suite 4-L  
Long Beach, New York 11561  
(516) 431-8644  
Fax: (516) 431-8658

# **EXHIBIT C**

## American Trademark Investigations, Inc.

September 6, 2007

Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square, 47<sup>th</sup> Floor  
New York, NY 10036

File No. 0708VERBS  
Re: The Verbs / UK  
Your Reference No.: 025725/0003

Dear Anthony:

Pursuant to your request to identify a physical address for the band - The Verbs - located in the U.K., as depicted on [www.myspace.com](http://www.myspace.com), we submit the following report:

Extensive Internet searches at dogpile.com; copernic.com; google.com and yahoo.com for the band members: Robbie Adams (drums); Lesley Boyle (guitar/vocal); Charlie Marr (vocals); and Martin Black (guitar) met with negative results for any viable contact.

A U.K. on-line directory proved negative for any listing for The Verbs in both the U.K. and Fife, Scotland.

A search within a people locator at [www.pipl.com](http://www.pipl.com) proved negative.

A search within the Party Sounds UK Bands database proved negative.

A U.K. on-line telephone directory for all band members was not conclusive - too many records.

On September 5, 2007 an E-mail was directed to the band via My Space. We are awaiting a reply.

Sincerely,

Elizabeth Elfeld

EE:llc  
[brownrudnick.verbs.uk](mailto:brownrudnick.verbs.uk)

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450 Shore Road  
Suite 4-L  
Long Beach, New York 11561  
(516) 431-8644  
Fax: (516) 431-8658

# **EXHIBIT D**

## American Trademark Investigations, Inc.

September 10, 2007

Anthony H. Handal, Esq.  
Brown Rudnick Berlack Israels LLP  
Seven Times Square, 47<sup>th</sup> Floor  
New York, NY 10036

File No. 0708VERBS  
Re: The Verbs / UK  
Your Reference No.: 025725/0003

Dear Anthony:

Pursuant to your request to identify a physical address for the band - The Verbs - located in the U.K., as depicted on [www.myspace.com](http://www.myspace.com), we submit the following report:

Extensive Internet searches at [dogpile.com](http://dogpile.com); [copernic.com](http://copernic.com); [google.com](http://google.com) and [yahoo.com](http://yahoo.com) for the band members: Robbie Adams (drums); Lesley Boyle (guitar/vocal); Charlie Marr (vocals); and Martin Black (guitar) met with negative results for any viable contact.

A U.K. on-line directory proved negative for any listing for The Verbs in both the U.K. and Fife, Scotland.

A search within a people locator at [www.pipl.com](http://www.pipl.com) proved negative.

A search within the Party Sounds UK Bands database proved negative.

A U.K. on-line telephone directory for all band members was not conclusive - too many records.

A search within Jam Base at [www.jambase.com](http://www.jambase.com) for all band members proved negative.

A search for The Verbs at [www.tinymixtapes.com](http://www.tinymixtapes.com) proved negative.

A Profound database ( compilation of newspaper and magazine articles) search proved negative for any articles relating to said subjects.

On September 5, 2007 an E-mail was directed to the band via My Space.

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450 Shore Road  
Suite 4-L  
Long Beach, New York 11561  
(516) 431-8644  
Fax: (516) 431-8658



## American Trademark Investigations, Inc.

Inasmuch as a reply was not received, we again forwarded an E-mail on September 10, 2007.

To date, we have not received a response.

We have exhausted all avenues of investigation.

We await your further instructions.

Sincerely,

Elizabeth Elfeld

EE:llc  
brownrudnick.verbs.uk

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